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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

INDIA'S IPR LANDSCAPE: LOCAL REALITIES, GLOBAL COMMITMENTS

AUTHORED BY - SHUBHANGI MISHRA¹

Abstract

When drafting and enforcing intellectual property rights (IPR) legislation, India has had the difficult task of striking a fine balance between stimulating innovation, protecting traditional knowledge, and complying with international agreements. This article thoroughly examines both national laws and international treaties in order to provide a thorough and exhaustive examination of India's IPR landscape. It highlights how important intellectual property rights (IPRs) are in the global economy and how necessary it is to protect them using a variety of international agreements. The article explores how India balances upholding international norms with defending its very own interests under WIPO treaties, bilateral trade agreements, and the TRIPS Agreement. Furthermore, it examines the intricate problems brought up by national interests, the formulation of international IPR laws, and the harmonisation of standards amongst legal systems. The essay also looks at how treaties might help with new problems like genetic resources and digital piracy as well as innovation and international cooperation. Furthermore, a thorough assessment is conducted of the effectiveness of treaty procedures in reconciling the rights holders' interests with public policy objectives, including information access, cultural preservation, and equitable development. This study provides important insights into the dynamic and ever-evolving nature of intellectual property governance in a world that is constantly changing through its critical evaluation of India's intellectual property rights policy in the global context.

Creative works of the mind, including innovations, literary and creative compositions, designs, names, symbols, and pictures utilised in trade, Come under the definition of intellectual property (IP). . This covers creations of the mind, including new inventions (protected by patents), creative designs (including industrial designs and trademarks), and artistic expressions (like books, music, and paintings). It also protects confidential business information (trade secrets) and the code that powers

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computers. Laws have been developed in order to protect such Intellectual properties. The goal of these intellectual property laws is to protect creator's property rights

A collection of legal rights known as IP rights (IPR) are awarded to people or businesses in return for their innovative or intellectual work that produces new innovations or works of art. By granting authors and inventors the sole right to their intellectual works for a predetermined amount of time, these rights are intended to safeguard intangible assets and encourage innovation. IPR encompasses a broad spectrum of intangible assets, such as innovations, designs, symbols, and literary and artistic works. IPR aims to encourage ingenuity and originality by guaranteeing all innovators and inventors to gain an advantage from their labours.

IPR establishes a legal framework for individuals and businesses to control the use, distribution, and industrial manipulation of their intellectual property. By giving exclusive rights for a specified amount of time, IPR seeks to achieve a balance between inventors' interests and the public's desire to access and use fresh ideas and works. Overall, intellectual property rights (IPR) serve an important role in supporting innovation and creativity by establishing a fair and equitable system for recognising and rewarding innovators and creators. It promotes the creation of new ideas and technologies while also ensuring that the public may reap the advantages of these advancements.

In today's fast-paced world of technology, science, and medicine, intellectual property (IP) has grown in importance. The global economic climate has also had an impact on business models that rely heavily on intellectual property to determine value and potential growth.

IPR management is a challenging process that calls for a range of actions and strategies that adhere to both international treaties and state legislation. National interests are no longer the main foundation for it. Intellectual property and related rights are significantly impacted by market demands, market reaction, and the cost of turning IP into a commercial enterprise. To put it another way, issues related to trade and commerce are crucial to IPR management. A range of subject-matter experts, including those in research, engineering, medical, law, finance, marketing, and economics, must be involved in the process to utilise, organise, and strategise for diverse forms of intellectual property rights. Every industry needs to be equipped with its own set of intellectual property laws, managerial concepts, strategies, and so forth, depending on its particular area of competence.

1. Beginning of IPR in India:

Intellectual property rights (IPR) are critical to supporting innovation and protecting human creativity. The need to safeguard intellectual property rights (IPR) is essential for promoting economic expansion, innovation, and creativity. Let us examine the landscape of Intellectual Property Rights in India, looking at the country's historical growth, current situation, and issues in protecting and enforcing IP.

1.1. Historical Perspective:

The foundation of modern intellectual property laws in India can be traced backwards to the colonial period.² The Indian Patent and Designs Act of 1911³ was one of the early legislations.

Act VI of 1856 was India's first patent-related legislation. IP law used to be intended to encourage innovation and public knowledge sharing by giving innovators a short-term advantage in return for disclosing their ideas. A new law (Act XV of 1859) was passed later to provide inventors with exclusive rights to their creations. The Patents and Designs Protection Act, however, was the new name given to the act in 1872. In India, this statute superseded all earlier legislation. This act created provisions for the issuance of patents with secret formulations, patents with additions, and extensions of patent terms from 14 years were made to 16 years.

India has made progress since gaining independence in bringing its intellectual property laws into compliance with international norms⁴. A bill was filed in the Lok Sabha during the year 1965 after many committees were formed to review the changes made to the law; nevertheless, the measure was not passed. Despite having expired in the year 1965, a revised version was presented in 1967, and after the committee's final recommendation, the Patents Act of 1970 was passed and is currently in use in India.

Legislative Framework: The key legislations governing Intellectual Property Rights in India include:

- 1.2.1 Copyright:** This is covered by the Copyright Act, of 1957. This helps to safeguard original and unique creations of authorship, such as literary, artistic, and musical productions. This includes books, paintings, music, and software. This intellectual property right grants the inventor substantial rights, including the distinctive right to replicate, circulate, carry out, and exhibit the work they have created. The creator's

² "Intellectual Property Rights in India", Reference Note, Members' Reference Service Laridis Lok Sabha Secretariat, New Delhi No.57/RN/Ref./Nov/2017

³ Monthly Review, vol. 41. p. 290 (1769)

⁴ "WIPO- A Brief History", International Bureau of WIPO (Access here- <https://www.wipo.int/about-wipo/en/history.html>)

copyright protection continues for his or her lifetime in addition to 60 years from the year of death.

- 1.2.2 Patent:** Patents are registered under the Patent Act, of 1970. The law grants innovators the exclusive rights to their works for a short time, which aids in the protection of inventions and discoveries. These rights are commonly awarded for unique and valuable procedures, machinery, material formulations, or improvements. A recognised patent is valid for 20 years after the application is filed. This 20-year term was established by the Patents (Amendment) Act of 2002 and applies to all authorised patents whose terms did not expire on May 20, 2003.
- 1.2.3 Trademarks:** The Trademark Act of 1999 is a law dealing with trademarks that provides for the registering process and improvement protection of trademarks for products and services, as well as the prevention of the utilisation of fraudulent marks. Distinctive aspects that differentiate between goods or services in the market, such as emblems, names, and slogans, are protected by trademark laws. They also assist consumers in associating certain attributes with a specific brand. A registered trademark in India is applicable for 10 years from the date the application was filed and is capable of being reissued an infinite number of times by reregistration and payment of required fees.
- 1.2.4 Trade Secrets:** There is no specific law that governs trade secrets in India. It can be governed by common principles such as Section 27 of the Contract Act, which requires the parties not to divulge data that is contradictory to the conditions of the contract between the parties, i.e., Non-Disclosure Agreements, as well as the principles of breach of confidence and equity. These rights cover confidential corporate information like as formulas, methods, designs, and customer lists, which might provide a competitive edge. Unlike patents, trade secrets are not granted a predetermined period of protection rather, the duration of protection is dependent on the information being kept confidential.
- 1.2.5 Industrial Design Rights:** The Designs Act of 2000 and the Designs Rules of 2001 safeguard industrial designs in India. The Designs Act of 2000 defines intellectual property, and the Designs Act and its accompanying Rules govern the protection of industrial designs. The Act's objective is to prevent new designs from being copied, so protecting the proprietor from damages. These rights cover the visual design of items,

such as their shape, surface, and decoration. These rights are meant to protect a design's unique aesthetic traits. The design may only be used in the class for which it is registered by the registered owner. According to Section 11 of the Act, the registered design is protected for 10 years from the date of registration, with the option to extend for an extra five.

1.2.6 Geographical Indications: In India, Geographical Indications (GI) are protected by the Geographical Indications of Goods (Registration and Protection) Act of 1999⁵. It protects commodities of a specific geographical origin that have features, reputations, or characteristics that are distinctive to that area. Examples include the Madhubani painting, Tirupati Laddu, Tirur Betel Leaf etc. The statute authorises the Geographical Indication Registry, which is housed inside the Ministry of Commerce and Industry's Department of Industry Promotion and Internal Trade, to issue GI tags.⁶ Registered GI tags in India are valid for the period of 10 years as of the date of filing and can be reinstated for another 10 years under the legal provisions outlined in Section 18 of the Act, as long as they are still in use.

1.2.7 Plant Variety Rights: The Protection of Plant Varieties and Farmers' Rights (PPV&FR) Act of 2001 safeguards plant variety rights in India. This intellectual property right is utilised to safeguard novel plant types by granting permission to breeders. The act recognises and safeguards the rights of farmers to contribute to the production of new plant types through the preservation, recovery, and distribution of plant genetic resources. The statute also permits agriculturalists to preserve, utilise, plant, replant, trade, distribute, or market agricultural goods, especially protected seed varieties by the act. The act protects registered plant types for 18 years in trees and vines and 15 years in other crops.

2. International Treaties of IPR:

India is a signatory to numerous international agreements and treaties related to intellectual property, such as the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Budapest Treaty, the Paris Convention, the Berne Convention, the Patent Cooperation Treaty, and

⁵ The Geographical Indications of Goods (Registration And Protection) Act, 1999

⁶ Ayussh Sanghi, "All about GI tags", Ayussh's Substack

others. These agreements influence the shaping and enforcement of IPR laws in the country. To intersect with international obligations India has passed numerous laws to protect intellectual property rights (IPRs). As a result, intellectual property has emerged as one of the world's largest and fastest-growing areas of law, compelling the expertise of lawyers who are familiar with IPRs across national and international boundaries.

The laws governing intellectual property (IP) around the world are always changing and adapting to the quick advancements in fields like technology etc. A framework for protecting intellectual property rights is now provided by a number of international treaties and accords.

These include the following:

2.1 Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)⁷:

The World Trade Organisation (WTO) upholds this agreement, which sets fundamental standards for various forms of intellectual property law, such as patents, copyrights, and trademarks. Member nations must guarantee the protection of AI software, innovations, and associated intellectual property. The TRIPS Agreement recognises the significance of AI-generated works by supervising dispute resolution and requiring notification of pertinent legislation. It also establishes baseline requirements for intellectual property rights protection and enforcement, including civil, administrative, and criminal proceedings.

Although AI-generated works and authorship are not expressly covered by the TRIPS Agreement, it does offer a framework for the safeguarding of IPR in an AI environment, raising the possibility that AI-generated works will be covered by copyright laws. Trade secrets and private information about AI algorithms and methods are protected under the TRIPS Agreement. Members are required by law to protect this data, including by contractual or criminal obligations, so long as it remains accessible to the public.

2.2 The Berne Convention for the Protection of Literary and Artistic Works⁸:

The rights of authors and the preservation of works are covered by this convention.

⁷ International Protection of Copyright and Related Rights, International Bureau of WIPO (Access here-https://www.wipo.int/edocs/mdocs/sme/en/wipo_wasme_ipr_ge_03/wipo_wasme_ipr_ge_03_9.pdf)

⁸ Berne Convention for the Protection of Literary and Artistic Works (1886), Access here-https://www.wipo.int/treaties/en/ip/berne/summary_berne.html

It eliminates the need for procedures like registration by offering automatic protection. This norm is essential for maintaining AI-produced works since it raises questions about authorship and ownership with regard to content generated by AI.

India joined the Berne Convention in April 1928. Parallel to the Paris Convention, the Berne Convention determined a set of fundamental rights that all countries were required to protect. It was predicated on the concept of national treatment. Safeguarding of creations and author rights are both covered by the Berne Convention. Many provisions in the treaty specify the minimal level of protection that must be offered as well as the unique actions that developing nations may take. It is based on the fundamental concepts listed below.

2.3 The Patent Cooperation Treaty⁹ (PCT):

Under the terms of this treaty, inventions pertaining to artificial intelligence, such as algorithms, techniques, and applications, may be patentable. This treaty allows inventions to receive simultaneous patent protection in multiple nations through international patent applications. Citizens or residents of a contracting member state can submit applications to the national patent office or the Geneva-based International Bureau of the World Intellectual Property Organisation. The treaty regulates formal requirements and allows candidates to edit or withdraw their application based on findings and recommendations.

2.4 The Madrid Agreement Concerning the International Registration of Marks¹⁰:

This covenant streamlines the international registration of trademarks. As AI technology becomes more integrated into branding and marketing efforts, trademarks for AI products and services become increasingly important.

By obtaining a valid international registration separately of the authorized

⁹ “Patent Cooperation Treaty (PCT)”, World Intellectual Property Organization (Access here- <https://www.wipo.int/export/sites/www/pct/en/docs/texts/pct.pdf>)

¹⁰ Madrid Agreement concerning the international registration of marks of April 14,1891, No. 11852 (Access here- <https://treaties.un.org/doc/Publication/UNTS/Volume%20828/volume-828-I-11852-English.pdf>)

Contracting Parties, this Agreement permits the protection of a mark across national borders. It forbids the use of misleading public relations cues and allows for the seizure of items carrying fraudulent or misleading source indicators. It does not, however, create a budget, governing body, or union. One or more Contracting Parties must be named in an application for international registration, and the International Bureau reviews submissions to make sure they adhere to the Agreement, Protocol, and Common Regulations.

2.5 The Hague Agreement Concerning the International Registration of Industrial Designs¹¹:

This agreement lays the groundwork for the worldwide registration of industrial designs. AI systems are capable of producing designs that comply with this agreement. One application submitted to WIPO is all that is required to register an industrial design under the Hague Agreement Concerning the International Registration of Industrial Designs. With the least amount of formality, it enables design owners to protect their creations across several nations or areas. This agreement also streamlines the supervision of an industrial design registration by allowing for the recording of subsequent revisions and the renewal of a worldwide registration in a single procedural step.

2.6 The Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure¹²:

This treaty makes it easier to deposit biological samples for patent proceedings, even though it has nothing to do with AI. This treaty can indirectly affect AI-related patent procedures when AI and biotechnology collide in sectors like healthcare and agriculture.

It is a significant agreement that governments, regardless of their territorial

¹¹ “The Hague Agreement Concerning the International Registration of Industrial Designs: Main Features and Advantages”, World Intellectual Property Organization (access here-
https://www.wipo.int/edocs/mdocs/mdocs/en/wipo_rs_ip_be_15/wipo_rs_ip_be_15_hague.pdf)

¹² Secretariat, WIPO, “Budapest Treaty on the International Recognition of the deposit of Microorganisms for the Purposes of Patent Procedure”, World Intellectual Property Organization, WO/INF/12 REV. 31(access here-
https://www.wipo.int/export/sites/www/treaties/en/registration/budapest/pdf/wo_inf_12.pdf)

boundaries, states that permit or mandate the storage of microorganisms for the patent process must acknowledge the deposition with any international depositary authority. In the context of discoveries in the food and medical industries, biological material that needs to be deposited for disclosure purposes is included in the broad definition of "microorganism." When an invention uses a microorganism that is not widely accessible to the public, disclosure needs to be made by the deposit of a sample with a specialised institution. Otherwise, disclosure needs to be made through a written description.

2.7 Paris Convention for the Protection of Industrial Property, 1833¹³:

The Paris Convention, which was ratified in 1883, prohibits unfair competition and includes industrial property in the widest sense, including trade names, patents, trademarks, industrial designs, utility models, service marks, and geographical indications. The signing of this international agreement was the first major step towards helping creators find ways to guarantee that their intellectual property was protected in other countries.

Two main objectives drove the creation of this convention: first, to prevent unintentional loss of eligibility for patent protection by releasing 81 patent applications and participating in international exhibitions prior to providing national patent applications; and second, to harmonise the diverse patent laws across nations.

The following guidelines are provided by the convention for specific categories of industrial properties:

2.7.1 Patents— Patents awarded for comparable inventions in the state that are party to the agreement, are unique and cannot be rejected, revoked, or stopped in other states on the basis of prior grants. If domestic law limits or forbids the sale of a product or patented technique, it is forbidden to refuse or invalidate a patent.

¹³ "Paris Convention for the Protection of Industrial Property", WIPO Database of Intellectual Property WIPO, Legislative Texts (Access here- https://www.unido.org/sites/default/files/2014-04/Paris_Convention_0.pdf)

- 2.7.2** Marks– Every state’s mark filing and registration are governed by local law, not by the Paris Convention. If the origin is unaffected, citizens cannot reject or invalidate petitions for registration or renewal.
- 2.7.3** Registration– The registration of a trademark in one State as a party to the convention has no bearing on its possible registrations in other countries, including its country of origin.
- 2.7.4** Industrial Designs– Industrial designs must be protected in every Contracting State; protection cannot be removed just because the design was not used in products made in that state.
- 2.7.5** Trade Names– States that are a part of the convention must protect trade names without requiring them to be filed or registered.
- 2.7.6** An indication of Source– States that are a part of the agreement must take steps to stop the use of false information, whether direct or indirect, about the origin of goods or the identities of those who make, produce, or trade them.
- 2.7.7** Unfair competition– States that are a part of the convention are required to provide sufficient protection against unfair competition.

2.8 Trademark Law Treaty, 1994¹⁴:

This treaty intends to streamline trademark registration procedures by allowing applications to link to goods and services from various Nice Classification classes. It doesn't require applicants to provide proof of business activity or registration in another country. Power of attorney can be connected to multiple registrations or applications. The treaty prohibits attestation, notarisation, authentication, legalisation, or certification of signatures, but allows Contracting Parties to design their own individualised international form.

India still has difficulties protecting intellectual property rights despite great development. The mounting number of patent applications, protracted legal processes, and issues like piracy are significant obstacles in this direction. These issues need constant attention since they impede

¹⁴ “Trademark Law Treaty and Regulations”, World Intellectual Property Organization, Geneva 1995 (Access here- https://www.wipo.int/edocs/pubdocs/en/wipo_pub_225.pdf)

investment and creativity in the nation.

The Indian government has put in place a number of programmes aimed at strengthening the intellectual property ecosystem. To expedite the resolution of intellectual property issues, it has set up specialised IP courts and offices. The protection of inventors' and creators' rights as well as the strength and efficacy of India's intellectual property laws have been made possible in large part by these endeavours.

India's approach to protecting intellectual property rights is admirable since it fosters innovation while taking the country's socioeconomic background into account. The current initiatives to resolve problems, expedite legal procedures, and adhere to international standards should benefit India's intellectual property environment. It is crucial to examine India's historical context, regulatory framework, difficulties, and governmental processes in order to fully comprehend the country's intellectual property rights laws. India's progressive stance on intellectual property rights is evidence of its dedication to fostering original thought and inventiveness in a world that is changing quickly. This legal idea seeks to protect people's or organisations' rights to their intellectual creations, enabling them to control and profit from their imaginative and creative pursuits.



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